Agriculture Committee

Wednesday - March 8, 2006
1 pm - 3 pm
214 The Capitol

MEETING PACKET

Allan G. Bense
Speaker

Ralph Poppell
Dwight Stansel
Co-Chairs

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Agriculture Committee

Start Date and Time:	Wednesday, March 08, 2006 01:00 pm
End Date and Time:	Wednesday, March 08, 2006 03:00 pm
Location:	214 Capitol
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 261 Florida Incentive-based Permitting Act by Stansel
HB 511 On-line Dating Services by Ambler

Workshop on the following:

HB 319 Gasoline Stations by Smith
HB 603 Gasoline Stations by Flores
HB 965 Consumer Emergency Gasoline Act by Domino

Presentation by:
Brady Revels, State FFA President

NOTICE FINALIZED on 03/06/2006 15:44 by SIMS-DAVIS.LINDA

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 261 Florida Incentive-based Permitting Act
SPONSOR(S): Stansel
TIED BILLS: **IDEN./SIM. BILLS:** SB 1906

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environmental Regulation Committee	7 Y, 0 N	Perkins	Kliner
2) Agriculture Committee		Kaiser	Reese
3) Agriculture & Environment Appropriations Committee			
4) State Resources Council			
5)			

SUMMARY ANALYSIS

The bill creates the Florida Incentive-based Permitting Act. The purpose of the act is to provide the Department of Environmental Protection (DEP) with authority to consider the compliance history of a permit applicant who has applied for an incentive-based permit. Incentive-based permits include Level 1 and Level 2 incentives which include longer permit durations, expedited permit reviews, short-form permit renewals, and other incentives to reward and encourage continued compliance with state environmental regulations.

The bill provides authorization to DEP to develop rules associated with Level 1 and Level 2 incentives. The bill also encourages DEP to work with permittees and permit applicants to encourage compliance with regulatory requirements in order to avoid burdensome and expensive consequences of noncompliance.

The bill provides that Level 1 and Level 2 incentives are applicable to coastal construction permitting activities, consumptive use permitting, and construction permitting activities associated with management and storage of surface waters.

The bill amends the authority of DEP to revoke permits pursuant to certain conditions.

The bill does not appear to have a significant fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill streamlines the permit and renewal process conducted by DEP by establishing incentives to permit applicants with a history of compliance with permit conditions, requirements, and environmental laws of this state.

Promote personal responsibility: The bill addresses personal responsibility by creating incentives for compliance with the permit conditions, requirements, and environmental laws of this state.

B. EFFECT OF PROPOSED CHANGES:

Issue – Incentive-based Permitting Program

Present Situation

The State of Florida regulates the impacts of certain activities on the environment primarily through three chapters of the Florida Statutes: Chapters 403, 161, and 373, F.S.

Chapter 403, F.S., is known and cited as the "Florida Air and Water Pollution Control Act." It is a matter of public policy of the state to protect and conserve the waters of the state along with maintaining safe levels of air quality for the citizens, wildlife, and aquatic life.[1] DEP is responsible for issuing permits for stationary installations that are reasonably expected to be a source of air and water pollution.[2] Section 403.087(3), F.S., provides for a regulatory incentive for compliance with existing regulations to include a financial incentive available for a renewal of an operation permit for a domestic wastewater treatment facility provided the facility meets certain conditions.

Parts I and II of Chapter 161, F.S., are known and cited as the "Beach and Shore Preservation Act." The 825 miles of sandy coastline fronting the Atlantic Ocean, the Gulf of Mexico, or the Straits of Florida are considered by many to be part of Florida's most valuable natural resources. In order to protect, preserve, and manage Florida's sandy beaches and adjacent coastal systems, the Legislature adopted the Beach and Shore Preservation Act contained in Parts I and II of Chapter 161, F. S.[3] For instance, any coastal construction, reconstruction of existing structures, or physical activity undertaken specifically for shore protection purposes upon sovereignty lands of Florida requires a coastal construction permit issued by DEP.[4]

Chapter 373, F.S., is known and cited as the "Florida Water Resources Act of 1972." It is a state policy that the waters in Florida be managed on a state-wide and regional basis because water constitutes a public resource benefiting the entire state.[5] Prior to construction or alteration of any stormwater management system, dam, impoundment, and reservoir appurtenant work, the DEP or the governing board of a water management district may require a permit authorizing the construction or alteration activity.[6]

Through its own administrative rules the DEP lists standards for issuing, or denying, permitting applications.[7] The DEP does consider an applicant's violation of DEP rules and regulations, but there

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[1] s. 403.021, F.S.
[2] s. 403.087, F.S.
[3] http://www.dep.state.fl.us/beaches/programs/about.htm
[4] s. 161.041, F.S.
[5] s. 373.016(4)(a), F.S.
[6] s. 373.413, F.S.
[7] Rule 62-4070, F.A.C.

is no administrative rule that allows for the consideration of continued compliance with existing environmental standards in Florida Statutes or the Florida Administrative Code.

Effect of Proposed Change

The bill creates section 403.0874, F.S., as an act to be known and cited as the Florida Incentive-based Permitting Program. The purpose of the act is to provide DEP with authority to consider a history of regulatory compliance by an applicant when DEP is considering whether to issue or reissue a permit to the applicant. It is incumbent on the applicant to request incentives as part of the permit application. Unless otherwise prohibited by state or federal law, agency rule, or federal regulation, and provided the applicant meets all other applicable criteria for the issuance of a permit, an applicant meeting the specified criteria qualifies for the following incentives:

Level 1 Requirements:
Applicant shall be entitled to incentives at a site based on the following:
- If the applicant conducted the regulated activity for at least 4 of the 5 years preceding submittal of the permit application or,
- If the activity is a new regulated activity, the applicant conducted a similar regulated activity under an agency permit for at least 4 of the 5 years at a different site in the state preceding submittal of the permit application.

An applicant shall not be entitled to incentives if the applicant has a history that includes any violation that resulted in enforcement action and the violation resulted in significant harm to human health or the environment at the subject site. Alleged violations shall not be considered unless a consent order or other settlement has been entered into or the violation has been adjudicated.

Level 1 Incentives:
- **Automatic Renewal of Permit:** A renewal of a permit shall be issued for a period of 5 years. In addition, after notice and opportunity for public comment, the permit may be automatically renewed for an additional 5 years without DEP action unless DEP determines, based on information submitted by the applicant or resulting from the public comments or its own records, that the applicant has committed violations during the review period that disqualify the applicant from receiving the automatic or expedited renewal.
- **Expedited Permit Review:** Processing time following receipt of a completed application shall be 45 days for the issuance of DEP action.
- **Short-form Renewals:** Renewals of permits not involving substantial construction or expansion may be made upon a shortened application form specifying only the changes in the regulated activity or a certification by the applicant that no changes in the regulated activity are proposed if that is the case.

Level 2 Requirements:
Applicant shall be entitled to incentives at a site based on the following:
- If the applicant meets the requirements for Level 1, and
- If the applicant takes any other actions not otherwise required by law that result in:
    a. Reduction in actual or permitted discharges or emissions;
    b. Reduction in the impacts of regulated activities on public lands or natural resources;
    c. Waste reduction or reuse;
    d. Implementation of a voluntary environmental management system; or
    e. Other similar actions as determined by DEP rule.

Level 2 Incentives:
- May include all Level 1 incentives.
- Issuance of 10 year permits, provided the applicant has conducted a regulated activity at the site for at least 5 years.
- Fewer routine inspections than other regulated activities similarly situated

- Expedited review of requests for permit modifications.
- DEP recognition, program-specific incentives, or certifications in lieu of renewal permits.
- No more than two requests for additional information.

The bill requires DEP to enter into rulemaking within six months after the effective date of this bill for Level 1 and Level 2 incentives. The rule is to specify incentives, qualifications, and how extended permits may be transferred. Incentives will not be available to permit applicants until the implementing rules are adopted.

The bill encourages DEP to work with applicants and permittees to encourage compliance in order to avoid the costly consequences associated with noncompliance activities.

The bill expands current statutory language to provide for Level 1 and Level 2 incentives to be applicable to permitting of coastal construction activities identified in Chapter 161, F.S., consumptive use permits in section 373.219, F.S., and permitting construction activities associated with management and storage of surface waters in part IV of Chapter 373, F.S.

Issue – Revocation of Permits

Present Situation

Section 403.087, F. S., is the statutory authority relating to the general issuance, denial, revocation, prohibition, and penalties associated with permits issued by DEP. Section 403.087(2), F.S., authorizes DEP to adopt, amend, or repeal rules for the issuance, denial, modification, and revocation of permits under this section. Chapter 62-4.100, F.A.C., provides that DEP revocation shall not become effective except after written notice is served by personal service, certified mail, or newspaper notice and upon the person(s) named therein and a hearing held, if requested, within the time specified within the notice.

Effect of Proposed Change

The bill amends section 403.087(7), F.S., to provide that DEP may revoke a permit only if the permitholder commits one of the listed acts.

The table below illustrates a comparison of the current law and the proposed language in the bill:

Section 403.087(7) F.S. A permit issued pursuant to this section shall not become a vested right in the permittee. The department may revoke any permit issued by it if it finds that the permitholder:	
CURRENT LAW	**PROPOSED LAW**
(a) Has submitted false or inaccurate information in his or her application;	(a) Has submitted **material** false or inaccurate information in **the** application **for such permit when true or accurate information would have warranted denial of the permit initially**;
(b) Has violated law, department orders, rules, or regulations, or permit conditions;	(b) Has violated law, department orders, rules, or regulations, or conditions **directly related to such permit**;
(c) Has failed to submit operational reports or other information required by department rule or regulation; or	(c) Has failed to submit operational reports or other information required by department rule or regulation **directly related to such permit**; or
(d) Has refused lawful inspection under s. 403.091.	(d) Has refused lawful inspection under s. 403.091 **at the facility authorized by such permit**.

Note: Bold underlined text is proposed statutory language.

C. SECTION DIRECTORY:

Section 1. Creates s. 403.0874, F.S., to provide a section name, legislative findings and public purpose, definitions, compliance incentives, and rulemaking.

Section 2. Creates s. 161.041(5), F.S., to provide that the Incentive-based Permitting Program provisions of s. 403.0874, F.S., are applicable to all permits issued under Chapter 161, F.S.

Section 3. Creates section 373.219(3), F.S., to expand Incentive-based Permit Program provisions to consumptive use permits.

Section 4. Creates s. 373.413(6), F.S., to provide that the Incentive-based Permitting Program provisions of s. 403.0874, F.S., are applicable to permits issued under part IV of Chapter 373, F.S.

Section 5. Amends s. 403.087 (7), F.S., relating to revocation of permits.

Section 6. Provides the bill takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures:

Non-recurring Effects: This bill includes rulemaking authority to implement the bill's provisions. Rulemaking costs will be insignificant and non-recurring. These costs include DEP's efforts to publicize a proposed rule through mail-outs and public workshops around the state, as well as costs associated with publication and process requirements pursuant to Chapter 120, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides an opportunity for a cost savings associated with obtaining and renewing a permit for an eligible permit applicant. The issuance of the permit may be expedited and, in some cases, may be automatically renewed.

D. FISCAL COMMENTS:

DEP states that the bill may encourage non-compliance with environmental regulations that could result in increased response costs and possibly increased costs for compliance/enforcement staff. In addition, DEP states that the time in which the permits must be reviewed will be greatly reduced, causing a need for additional permitting staff to do the reviews, or resulting in backlogs that will have substantive and fiscal consequences to the department and to permit applicants. The funding DEP receives from permit fees may be reduced.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other: None.

RULE-MAKING AUTHORITY:

DEP would be required to create additional rules for the implementation of this act.

B. DRAFTING ISSUES OR OTHER COMMENTS:

DEP Comments:
DEP reports that under current law, it is unusual in state licensing/certification/permitting procedures for an agency to provide incentives to applicants to comply with existing legal requirements. DEP indicates that after having discussions with the Department of Highway Safety and Motor Vehicles and the Department of Business and Professional Regulation concerning drivers and business licensing issuance and renewals, neither agency provides incentives to applicants merely because the applicants have obeyed relevant laws and regulations. DEP maintains this bill allows incentives too easily to be obtained, revocations more difficult, and restricts the scope of the agency review of permit applications. DEP reports that the bill may exclude certain programs from the incentive provisions if federal law or regulation would otherwise prohibit those incentives and the bill may impact DEP's siting certifications under Chapter 403, F.S.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None

A bill to be entitled

An act relating to the Florida Incentive-based Permitting Act; creating s. 403.0874, F.S.; providing a short title; providing legislative findings; providing purposes; providing definitions; providing for an Incentive-based Permitting Program; providing compliance incentives for certain environmental permitting activities; providing requirements and limitations; providing for administration by the Department of Environmental Protection; requiring the department to adopt certain rules; amending ss. 161.041, 373.219, and 373.413, F.S.; specifying application of Incentive-based Permitting Program provisions; amending s. 403.087, F.S.; revising criteria for department permit issuance to conform; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 403.0874, Florida Statutes, is created to read:

403.0874 Incentive-based Permitting Program.--

(1) SHORT TITLE.--This section may be cited as the "Florida Incentive-based Permitting Act."

(2) LEGISLATIVE FINDINGS; PUBLIC PURPOSE.--

(a) The Legislature finds and declares that a permit applicant's history of compliance with applicable permit conditions and requirements and the environmental laws of this state is a factor that should be considered by the agency when

the agency is considering whether to issue or reissue a permit to an applicant, based upon compliance incentives under this section.

(b) Permit applicants with a history of compliance with applicable permit conditions and requirements and the environmental laws of this state should be eligible for longer permits, expedited permit reviews, short-form permit renewals, and other incentives to reward and encourage such applicants.

(c) The agency is encouraged to work with permittees and permit applicants to encourage compliance and avoid burdensome and expensive consequences of noncompliance.

(d) It is therefore declared to be the purpose of this section to provide the agency with clear and specific authority to consider the compliance history of a permit applicant who has applied for an incentive-based permit.

(3) DEFINITIONS.--For purposes of this section:

(a) "Agency" means the Department of Environmental Protection.

(b) "Applicant" means the proposed permittee or transferee, owner, or operator of a regulated activity seeking an agency permit.

(c) "Environmental laws" means any state or federal law that regulates activities for the purpose of protecting the environment, or for the purpose of protecting the public health from pollution or contaminants, but does not include any law that regulates activities for the purpose of zoning, growth management, or land use. The term includes, but is not limited

to, chapter 161, parts II and IV of chapter 373, and chapter 403.

(d) "Regulated activity" means any activity, including, but not limited to, the construction or operation of a facility, installation, system, or project, for which a permit or certification is required by law.

(e) "Site" means a single parcel, or multiple contiguous or adjacent parcels, of land on which the applicant proposes to conduct, or has conducted, a regulated activity.

(4) COMPLIANCE INCENTIVES.--In order to obtain compliance incentives, the applicant must affirmatively request such incentives as part of the permit application. Unless otherwise prohibited by state or federal law, agency rule, or federal regulation, and provided the applicant meets all other applicable criteria for the issuance of a permit, any applicant who meets the criteria set forth in this subsection is entitled to the following incentives:

(a) Level 1.--

1. An applicant shall be entitled to incentives pursuant to this paragraph at a site if the applicant conducted the regulated activity for at least 4 of the 5 years preceding submittal of the permit application or, if the activity is a new regulated activity, the applicant conducted a similar regulated activity under an agency permit for at least 4 of the 5 years at a different site in this state preceding submittal of the permit application. However, an applicant shall not be entitled to incentives under this paragraph if the applicant has a relevant compliance history at the subject site that includes any

violation that resulted in enforcement action and the violation resulted in the potential for harm to human health or the environment. Alleged violations shall not be considered unless a consent order or other settlement has been entered into or the violation has been adjudicated.

2. Level 1 incentives shall include:

a. Automatic renewal of permit.--A renewal of a permit shall be issued for a period of 5 years and shall, after notice and an opportunity for public comment, be automatically renewed for one additional 5-year term without agency action unless the agency determines, based on information submitted by the applicant or resulting from the public comments or its own records, that the applicant has committed violations during the relevant review period that disqualify the applicant from receiving the automatic or expedited renewal.

b. Expedited permit review.--The processing time following receipt of a completed application shall be 45 days for the issuance of the agency action.

c. Short-form renewals.--Renewals of permits not involving substantial construction or expansion may be made upon a shortened application form specifying only the changes in the regulated activity or a certification by the applicant that no changes in the regulated activity are proposed if that is the case. Applicants for short-form renewals shall complete and submit the prescribed compliance form with the application and shall remain subject to the compliance history review of this section. All other procedural requirements for renewal applications remain unchanged. This provision shall supplement

any expedited review processes found in agency rules.

d. Rulemaking.--Within 6 months after the effective date of this section, the agency shall initiate rulemaking to implement Level 1 incentives. The rule shall specify what incentives will be made available, how applicants may qualify for incentives, and how extended permits may be transferred. Until an implementing rule is adopted, Level 1 incentives shall not be available to permit applicants under this section.

(b) Level 2.--

1. An applicant shall be entitled to incentives pursuant to this paragraph if the applicant meets the requirements for Level 1 and the applicant takes any other actions not otherwise required by law that result in:

a. Reductions in actual or permitted discharges or emissions;

b. Reductions in the impacts of regulated activities on public lands or natural resources;

c. Waste reduction or reuse;

d. Implementation of a voluntary environmental management system; or

e. Other similar actions as determined by agency rule.

2. Level 2 incentives may include all Level 1 incentives and shall also include:

a. Ten-year permits, provided the applicant has conducted a regulated activity at the site for at least 5 years.

b. Fewer routine inspections than other regulated activities similarly situated.

c. Expedited review of requests for permit modifications.

d. Agency recognition, program-specific incentives, or certifications in lieu of renewal permits.

e. No more than two requests for additional information.

(c) Rulemaking.--Within 6 months after the effective date of this section, the agency shall initiate rulemaking to implement Level 2 incentives. The rule shall specify what incentives will be made available, how applicants may qualify for incentives, and how extended permits may be transferred. Until an implementing rule is adopted, Level 2 incentives shall not be available to permit applicants under this section.

Section 2. Subsection (5) is added to section 161.041, Florida Statutes, to read:

161.041 Permits required.--

(5) The Incentive-based Permitting Program provisions of s. 403.0874 shall apply to all permits issued under this chapter.

Section 3. Subsection (3) is added to section 373.219, Florida Statutes, to read:

373.219 Permits required.--

(3) The Incentive-based Permitting Program provisions of s. 403.0874 shall apply to all permits issued under this part.

Section 4. Subsection (6) is added to section 373.413, Florida Statutes, to read:

373.413 Permits for construction or alteration.--

(6) The Incentive-based Permitting Program provisions of s. 403.0874 shall apply to permits issued under this section.

Section 5. Subsection (7) of section 403.087, Florida Statutes, is amended to read:

403.087 Permits; general issuance; denial; revocation; prohibition; penalty.--

(7) A permit issued pursuant to this section shall not become a vested right in the permittee. The department may revoke any permit issued by it if it finds that the permitholder:

(a) Has submitted material false or inaccurate information in the ~~his or her~~ application for such permit when true or accurate information would have warranted denial of the permit initially;

(b) Has violated law, department orders, rules, or regulations, or ~~permit~~ conditions directly related to such permit;

(c) Has failed to submit operational reports or other information required by department rule or regulation directly related to such permit; or

(d) Has refused lawful inspection under s. 403.091 at the facility authorized by such permit.

Section 6. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 511 On-line Dating Services
SPONSOR(S): Ambler
TIED BILLS: **IDEN./SIM. BILLS:** SB 1806

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee		Reese AR	Reese AR
2) Judiciary Committee			
3) Agriculture & Environment Appropriations Committee			
4) State Resources Council			
5)			

SUMMARY ANALYSIS

The bill creates the "Florida Internet Dating Safety Act" to provide residents of the state with information relating to potential personal safety risks associated with on-line dating. The legislation provides that on-line dating providers offering services to Florida members shall provide to Florida members a "safety awareness notification" with a list of descriptive safety measures designed to increase awareness of safer dating practices.

The bill also provides that an on-line dating service must disclose to Florida members whether or not the service conducts criminal background checks on its members. If such screenings are conducted, the service must disclose to Florida members its policy relating to members identified as having a felony or sexual offense conviction and that the screenings do not cover records that are not public or records from foreign countries.

The bill establishes the Florida Department of Agriculture and Consumer Services as the clearinghouse for intake of information relating to this act from consumers, residents, and victims.

Civil remedies are provided for persons accessing an on-line dating service not in compliance, and civil penalties are provided against the owners of a non-compliant on-line dating service. Exclusions from the act's requirements are provided for Internet access intermediaries and Internet access service providers.

The bill does not appear to have a fiscal impact on state or local government. The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government and safeguard individual liberty – The bill creates government regulation over a currently unregulated business.

Promote personal responsibility – The bill may increase personal responsibility for past unlawful behavior and may increase awareness of potential risks to personal safety.

B. EFFECT OF PROPOSED CHANGES:

Present situation: On-line dating services provide an opportunity for persons using the internet to advertise themselves as available for dating, and to search for others similarly available. There are thousands of on-line dating services, including large generalized services and smaller specialized services. The two largest services claim to have approximately 13 million subscribers each. Smaller specialized versions often cater to particular ethnic and religious groups, or offer specialized services. On-line dating services are currently unregulated by the state.

Part II of ch. 501, F.S., is the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). The act provides remedies and penalties for "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce."[1] Remedies for acts prohibited by FDUTPA may include an action to enjoin a person from committing such acts[2] as well as the imposition of a civil penalty of not more than $10,000.[3] Actions may be brought by a state attorney or the Department of Legal Affairs[4] or by a consumer.[5]

Additionally, FDUPTA permits any person who has been aggrieved by a violation under FDUPTA to obtain a declaratory judgment and to enjoin a person who has or is violating FDUPTA.[6] Additionally, a person who has suffered a loss as a result of such violation may be able to recover actual damages, attorney's fees, and costs.[7]

Effect of proposed changes: The bill creates the "Florida Internet Dating Safety Awareness Act" and makes the following legislative findings:

- Residents of this state need to be informed when viewing websites of on-line dating services as to potential risks to personal safety associated with on-line dating.
- Requiring disclosures in the form of guidelines for safer dating and informing residents as to whether a criminal background screening has been conducted on members of on-line dating services fulfills a compelling state interest to increase public awareness of possible risks associated with Internet dating activities.
- The act of transmitting electronic dating information over the Internet addressed to residents of the state, and the act of accepting membership fees from residents of the state, means that an on-line dating service is operating, conducting, engaging in, and otherwise carrying on a business in the state subjecting such on-line dating service providers to regulation by the state and to the jurisdiction of the state's courts.

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[1] Section 501.204, F.S.
[2] Section 501.207(1)(b), F.S.
[3] Section 501.2075, F.S. Violations against a senior citizen or handicapped person may result in a penalty of not more than $15,000 (s. 501.2077, F.S.).
[4] Section 501.207, F.S.
[5] *Id.*
[6] Section 501.211(1), F.S.
[7] Section 501.211(2), F.S.

The bill provides the following definitions:

- **Communicate or communicating** means free-form text authored by a member or real-time voice communication through an on-line dating service provider.
- **Criminal background screening** means a search for a person's felony and sexual offense convictions by one of the following means:
    - By searching available and regularly updated government public record databases for felony and sexual offense convictions so long as such databases, in the aggregate, provide substantially national coverage; or
    - By searching a database maintained by a private vendor that is regularly updated and is maintained in the United States with substantial national coverage of criminal history records and sexual offender registries.
- **Department** means the Department of Agriculture and Consumer Services
- **Florida member** means a member, as defined in subsection (5), who provides a Florida billing address or zip code when registering with the provider.
- **Member** means a person who submits to an on-line dating service provider the information required by the provider to access the provider's service for the purpose of engaging in dating, participating in compatibility evaluations with other persons, or obtaining matrimonial matching services.
- **On-line dating service provider or provider** means a person engaged in the business of offering or providing to its members for a fee access to dating, compatibility evaluations between persons, or matrimonial matching services through the Internet.
- **Sexual offense conviction** means a conviction for an offense that would qualify the offender for registration as a sexual offender pursuant to Florida law (s. 943.0435, F.S.) or under another jurisdiction's equivalent statute.

Provider safety awareness disclosures

An on-line dating service provider offering services to Florida members must disclose:

- A safety awareness notification that includes a list and description of safety measures reasonably designed to increase awareness of safer dating practices as determined by the provider.
- Whether or not the website conducts criminal background screenings. Such disclosure must be in bold, capital letters in at least 12-point type.

If the on-line dating service provider conducts criminal background checks, and the provider's policy allows a member who has been identified as having a felony or sexual offense conviction to have access to its service to communicate with any Florida member, the provider must advise that such background screenings are not foolproof nor are they intended to give members a false sense of security. The provider must also disclose that not all criminal records are public in all states, not all databases are current, and that only publicly available felony and sexual offense convictions are included in the screening. Also, screenings do not cover other convictions or arrests or convictions from foreign countries.

Clearinghouse

The bill provides that the Department of Agriculture and Consumer Services shall serve as the clearinghouse for intake of all information from consumers, residents, and victims concerning the act. The consumer hotline may be used for intake of information, which may be directed to the appropriate enforcement authority, as determined by the department.

Civil Penalties

This bill includes a legislative finding that the act of transmitting files over the internet addressed to residents of the state, and the act of accepting membership fees from residents of the state, means that an on-line dating service is operating, conducting, engaging in, and otherwise carrying on a business in the state subjecting such on-line dating service providers to regulation by the state and to the jurisdiction of the state's courts.

The failure of an on-line dating service provider to comply with the disclosure requirements of this bill is a deceptive and unfair trade practice under Part II of ch. 501, F.S., which part is known as the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). Each failure to provide a required disclosure constitutes a separate violation.

Under FDUTPA, the state[8] may seek declaratory and injunctive relief against a violator. The state may also seek a civil penalty of up to $10,000 for a willful violation, plus attorney's fees. The Attorney General may issue a cease and desist order to anyone violating FDUTPA. An individual may bring an action for injunctive relief, actual damages, and attorney's fees.

In addition to the FDUTPA remedy, this bill provides that a court may impose a civil penalty of up to $1,000 per violation, with an aggregate total not to exceed $25,000 for any 24-hour period, against any on-line dating service provider who violates any requirement of this act. Suit may be brought by either the Department of Legal Affairs or by the Division of Consumer Services of the Department of Agriculture and Consumer Services. Penalties collected accrue to the enforcing agency to "further consumer enforcement efforts."

Exceptions to Regulation

This bill provides: "An internet service provider does not violate this act solely as a result of serving as an intermediary for the transmission of electronic messages between members of an on-line dating service provider." Primarily, this protects internet service providers from being deemed an on-line dating service company simply because they are transmitting e-mail and instant messages between persons.

Another exception is provided for internet web access services, which are not considered an on-line dating service provider simply for renting storage space and bandwidth.

C. SECTION DIRECTORY:

Section 1. Creates s. 501.165, F.S., creating a short title and stating legislative intent.

Section 2. Creates. s. 501.166, F.S., providing definitions applicable to regulation of online dating service providers.

Section 3. Creates s. 501.167, F.S., requiring certain disclosures by on-line dating service providers.

Section 4. Creates s. 501.168, F.S., naming the Department of Agriculture and Consumer Services as the clearinghouse for intake of information relating to the act.

Section 5. Creates s. 501.169, F.S., creating civil penalties for failure of an on-line dating service provider to comply with the act.

Section 6. Creates s. 501.171, F.S. to provide exclusions.

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[8] Section 501.203(2), F.S., provides that the state attorney for the judicial circuit in which the violation occurred is the primary enforcing authority. If the violation occurs in more than one judicial circuit, if the state attorney defers, or if the state attorney does not act on a complaint within 90 days, the Attorney General is the enforcing authority.

Section 7. Provides direction to the Division of Statutory Revision.

Section 8. Creates a severability clause.

Section 9. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill appears as if it may have a fiscal impact on thousands of website owners, who will be required to reprogram their websites in order to comply with the bill's requirements, or cease offering services to Florida residents. Website operators who elect to change their operation because of this bill may also incur the cost of ordering and analyzing criminal history background checks.

This bill may increase the cost to Florida residents who utilize on-line dating services should more providers start requiring criminal history background checks.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:[9]

There have been many attempts by federal and state governments to regulate the internet. Many have been found unconstitutional. Constitutional concerns may be raised by the bill related to the Commerce Clause, the First Amendment, and Due Process. The First Amendment issue applies regardless of where the website operator resides. The Commerce Clause and Due Process issues apply only to websites operated outside of the state. Staff is unaware of any major on-line dating service provider headquartered in Florida.[10]

Commerce Clause

The United States Supreme Court describes the Commerce Clause as follows:

> The Commerce Clause and its nexus requirement are informed not so much by concerns about fairness for the individual defendant as by structural concerns about the effects of state regulation on the national economy. Under the Articles of Confederation, state taxes and duties hindered and suppressed interstate commerce; the Framers intended the Commerce Clause as a cure for these structural ills. It is in this light that we have interpreted the negative implication of the Commerce Clause.

Quill Corp. v. North Dakota, 504 U.S. 298, 312 (1992) (internal citations omitted).

The Commerce Clause allows Congress to regulate commerce between the states. Congress has stated that "it is the policy of the United States . . . to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." 47 U.S.C. 230(b). It could be argued that this clause states a congressional intent that the states may not regulate the internet.

Dormant commerce clause analysis is a part of Commerce Clause analysis. The dormant commerce clause is the theory that, where Congress has not acted to regulate or deregulate a specific form of commerce between the states, it is presumed that Congress would prohibit unreasonable restrictions upon that form of interstate commerce.[11]

Dormant Commerce Clause doctrine distinguishes between state regulations that "affirmatively discriminate" against interstate commerce and evenhanded regulations that "burden interstate transactions only incidentally." *Maine v. Taylor*, 477 U.S. 131, 138 (1986). Regulations that "clearly discriminate against interstate commerce [are] virtually invalid per se," *National Electric Manufacturers Association v. Sorrell*, 272 F.3d 104, 108 (2d Cir.2001), while those that incidentally burden interstate commerce will be struck down only if "the burden imposed on such commerce is clearly excessive in relation to the putative local benefits," *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

State regulations may burden interstate commerce "when a statute (i) shifts the costs of regulation onto other states, permitting in-state lawmakers to avoid the costs of their political decisions, (ii) has the practical effect of requiring out-of-state commerce to be conducted at the regulating state's direction, or (iii) alters the interstate flow of the goods in question, as distinct from the impact on companies trading in those goods." *Brown & Williamson Tobacco Corp. v. Pataki*, 320 F.3d 200, 208-09 (2d Cir.2003) (citations omitted).

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[9] The following constitutional discussion is republished from the 2005 analysis of HB 1035 w/CS.

[10] Two of the three largest on-line dating services are located in California; the third is located in Texas.

[11] The Commerce Clause also allows Congress to specifically leave regulation of an area to the states, even if the effect of leaving such regulation to the states leads to burdensome and conflicting regulation. The most notable example of this is regulation of the insurance industry.

"A state law that has the 'practical effect' of regulating commerce occurring wholly outside that State's borders is invalid under the Commerce Clause." *Healy v. The Beer Institute*, 491 U.S. 324, 332 (1989). Because the internet does not recognize geographic boundaries, it is difficult, if not impossible, for a state to regulate internet activities without "project[ing] its legislation into other States." *Id.* at 334. "We think it likely that the internet will soon be seen as falling within the class of subjects that are protected from State regulation because they 'imperatively demand[ ] a single uniform rule.'" *American Booksellers Foundation v. Dean*, 342 F.3d 96, 104 (2nd Cir. 2003). See also, *ACLU v. Johnson*, 194 F.3d 1149, 1162 (10th Cir. 1999); and *American Libraries Association v. Pataki*, 969 F.Supp. 160 (S.D.N.Y. 1997)(all three cases striking a state law regulating internet commerce as a violation of the dormant commerce clause).

In *American Libraries Ass'n v. Pataki*, 969 F.Supp. 160 (S.D.N.Y. 1997). the court enjoined New York from enforcing a statute which prevented communications with minors over the Internet "which, in whole or in part, depicts actual or simulated nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors." *Pataki*, 969 F.Supp. at 163. The court found that the statute violated the Commerce Clause for three reasons:

> First, the practical impact of the New York Act results in the extraterritorial application of New York law to transactions involving citizens of other states and is therefore per se violative of the Commerce Clause. Second, the benefits derived from the Act are inconsequential in relation to the severe burdens it imposes on interstate commerce. Finally, the unique nature of cyberspace necessitates uniform national treatment and bars the states from enacting inconsistent regulatory schemes.

Pataki, 969 F.Supp. at 183-184.

The bill provides that it only applies to web pages viewed by persons in Florida. Case law has said that "it remains difficult for 'publishers' who post information on the internet to limit website access to . . . viewers from certain states." *American Booksellers v. Dean,* 342 F.3d 96, 99 (2nd Cir. 2003). However, users of online dating service providers are required to give their location, and have incentive to do so because of the local nature of dating.

Neither the United States Supreme Court nor the11th Circuit has addressed the impact of the Commerce Clause on state regulation of the Internet. No federal case was found in any of the other circuits other than cases striking a state law that purported to regulate the internet.[12] However, most of those other laws were laws criminalizing internet conduct. There are no criminal sanctions in this bill, and it is likely that the level of review for civil sanctions is lower than the level of review for criminal laws. This bill undoubtedly imposes some burden on interstate commerce; the key question for Commerce Clause analysis is whether such burden is "unreasonable."

First Amendment

This bill requires that an internet provider give one or more specific messages to all persons who access the website, and provides civil penalties for the failure to provide that message.

The First Amendment right to free speech applies to commercial speech. *Virginia Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976). In later decisions, the Supreme Court gradually articulated a test based on the "commonsense distinction between speech proposing a commercial transaction, which occurs in an area traditionally subject to government regulation, and other varieties of speech. *Central Hudson Gas & Electric Corp. v. Public Service Commission of*

[12] Staff did not review any of the "wine cases" in this regard. The wine cases discuss whether the commerce clause allows a state to prohibit wine shipments from out of state. The constitutional issue in those cases is which part of the Constitution applies: the Commerce Clause, which clearly prohibits such laws, or the 21st Amendment (repealing prohibition), which clearly provides that the states may regulate the sale and consumption of alcohol within their borders.

N.Y., 447 U.S. 557 (1980). *Central Hudson* identified several factors that courts should consider in determining whether a regulation of commercial speech survives First Amendment scrutiny:

> For commercial speech to come within [the First Amendment], it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

447 U.S., at 566. In *Edenfeld v. Fane*, 507 U.S. 761 (1993), the Supreme Court explained that the Government carries the burden of showing that a challenged regulation directly advances the governmental interest asserted in a direct and material way. That burden "is not satisfied by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree." *Id.*, at 770-771. The Court cautions that this requirement is critical; otherwise, "a State could with ease restrict commercial speech in the service of other objectives that could not themselves justify a burden on commercial expression." *Id.*, at 771. *Rubin v. Coors Brewing Company*, 514 U.S. 476 (1995)(prohibiting certain government regulation of beer labeling despite a government argument that such restrictions were necessary for health, safety and welfare).

A state cannot compel a person to distribute a particular statement that the person disagrees with. Florida law used to require that a newspaper that published an editorial critical of a candidate for political office was required to provide the politician with space to make a reply. This right of reply law was found unconstitutional in *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974). In *Pacific Gas and Electric Co. v. Public Utilities Commission of California*, 475 U.S. 1 (1986), the United States Supreme Court ruled that California cannot compel a utility company to give its excess space in billing envelopes to other entities. "Compelled access like that ordered in this case [by the utilities commission] both penalizes the expression of particular points of view and forces speakers to alter their speech to conform with an agenda they do not set." *Id.* at 9.[13] It is possible that a court may find that the statements required by this bill rise to the level of compelled speech.

Jurisdiction Over Non-Residents

The due process clause of the state and federal constitutions require the courts to provide due process to all litigants in any court case. One part of the concept of due process is the requirement that a court not act unless the court has legal jurisdiction over a party to the litigation. It is a violation of due process for a court to enter a judgment affecting a person unless the court has jurisdiction over that person.

Whether the State of Florida can exercise civil jurisdiction over a website operator in a foreign country is a matter of treaty. It is possible that the State, or a citizen of the state, may be able to prosecute a civil cause of action against a website operator located in a foreign country who is violating the provisions of this bill.

It is likely that the state can impose civil court jurisdiction over a citizen of another state who violates the provisions of this bill. The leading case on civil jurisdiction over internet commerce is *Zippo Mfg. v. Zippo Dot Com, Inc.*, 952 F.Supp. 1119 (W.D.Pa. 1997). Zippo makes a distinction between a passive website, one that just provides information, versus an active website that actively takes orders and allows the operator to enter into contracts with citizens of the state. The Zippo rule is that the operator of a passive website is not subject to personal jurisdiction in any state where someone

[13] This bill assumes that all operators of an online dating service would want to encourage their members to conduct a background check before meeting a prospective date. An operator that wanted to take a contrary view, perhaps to say that such a search is not warranted, would have difficulty taking that position because this bill requires disclosures that contradict this view.

may happen to view the website. On the other hand, the operator of an active website that accepts sales orders from the resident of a state should anticipate having to defend a civil lawsuit in that state.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

A bill to be entitled

An act relating to on-line dating services; creating ss. 501.165-501.171, F.S., the "Florida Internet Dating Safety Awareness Act"; providing legislative findings; defining terms; requiring certain disclosures by on-line dating services; providing a clearinghouse for consumers; providing civil penalties; providing exclusions; providing a directive to the Division of Statutory Revision; providing severability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 501.165, Florida Statutes, is created to read:

501.165 Florida Internet Dating Safety Awareness Act; legislative findings.--

(1) Sections 501.165-501.171 may be cited as the "Florida Internet Dating Safety Awareness Act."

(2)(a) The Legislature has received public testimony that criminals and sex offenders use on-line dating services to prey upon the citizens of this state.

(b) The Legislature finds that residents of this state need to be informed when viewing websites of on-line dating services as to potential risks to personal safety associated with on-line dating. Also, requiring disclosures in the form of guidelines for safer dating and informing residents as to whether a criminal background screening has been conducted on members of an on-line dating service fulfills a compelling state

interest to increase public awareness of the possible risks associated with Internet dating activities.

(c) The Legislature finds that the act of transmitting electronic dating information over the Internet addressed to residents of the state, and the act of accepting membership fees from residents of the state, means that an on-line dating service is operating, conducting, engaging in, and otherwise carrying on a business in the state subjecting such on-line dating service providers to regulation by the state and to the jurisdiction of the state's courts.

Section 2. Section 501.166, Florida Statutes, is created to read:

501.166 Definitions.--As used in ss. 501.165-501.171:

(1) "Communicate" or "communicating" means free-form text authored by a member or real-time voice communication through an on-line dating service provider.

(2) "Criminal background screening" means a search for a person's felony and sexual offense convictions initiated by an on-line dating service provider and conducted by one of the following means:

(a) By searching available and regularly updated government public record databases for felony and sexual offense convictions so long as such databases, in the aggregate, provide substantial national coverage; or

(b) By searching a database maintained by a private vendor that is regularly updated and is maintained in the United States with substantial national coverage of criminal history records and sexual offender registries.

(3) "Department" means the Department of Agriculture and Consumer Services.

(4) "Florida member" means a member as defined in subsection (5) who provides a Florida billing address or zip code when registering with the provider.

(5) "Member" means a person who submits to an on-line dating service provider the information required by the provider to access the provider's service for the purpose of engaging in dating and participating in compatibility evaluations with other persons or obtaining matrimonial matching services.

(6) "On-line dating service provider" or "provider" means a person engaged in the business of offering or providing to its members access to dating and compatibility evaluations between persons or matrimonial matching services through the Internet.

(7) "Sexual offense conviction" means a conviction for an offense that would qualify the offender for registration as a sexual offender pursuant to s. 943.0435 or under another jurisdiction's equivalent statute.

Section 3. Section 501.167, Florida Statutes, is created to read:

501.167 Provider safety awareness disclosures.--An on-line dating service provider offering services to Florida members shall:

(1) Provide a safety awareness notification with, at a minimum, information that includes a list and description of safety measures reasonably designed to increase awareness of safer dating practices as determined by the provider. Examples of such notifications include:

(a) "Anyone who is able to commit identity theft can also falsify a dating profile."

(b) "There is no substitute for acting with caution when communicating with any stranger who wants to meet you."

(c) "Never include your last name, e-mail address, home address, phone number, place of work, or any other identifying information in your on-line profile or initial e-mail messages. Stop communicating with anyone who pressures you for personal or financial information or attempts in any way to trick you into revealing it."

(d) "If you choose to have a face-to-face meeting with another member, always tell someone in your family or a friend where you are going and when you will return. Never agree to be picked up at your home. Always provide your own transportation to and from your date and meet in a public place at a time with many people around."

(2) If an on-line dating service provider does not conduct criminal background screenings on its members, the provider shall disclose, clearly and conspicuously, to all Florida members that the on-line dating service provider does not conduct criminal background screenings. The disclosure shall be provided when an electronic mail message is sent or received by a Florida member, on the profile describing a member to a Florida member, and on the provider's website pages used when a Florida member signs up. A disclosure under this subsection shall be in bold, capital letters in at least 12-point type.

(3) If an on-line dating service provider conducts criminal background screenings on all of its communicating

members, then the provider shall disclose, clearly and conspicuously, to all Florida members that the on-line dating service provider conducts a criminal background screening on each member prior to permitting a Florida member to communicate with another member. The disclosure shall be provided on the provider's website pages used when a Florida member signs up. A disclosure under this subsection shall be in bold, capital letters in at least 12-point type.

(4) If an on-line dating service provider conducts criminal background screenings, then the provider shall disclose whether it has a policy allowing a member who has been identified as having a felony or sexual offense conviction to have access to its service to communicate with any Florida member; that background screenings for felony and sexual offense convictions are not foolproof, are not intended to give members a false sense of security, are not a perfect safety solution and criminals may circumvent even the most sophisticated search technology; that not all criminal records are public in all states and not all databases are up to date; that only publicly available felony and sexual offense convictions are included in the screening; and that screenings do not cover other types of convictions or arrests or any convictions from foreign countries.

Section 4. Section 501.168, Florida Statutes, is created to read:

501.168 Clearinghouse.--The department shall serve as the clearinghouse for intake of information concerning ss. 501.165-501.171, the Florida Internet Dating Safety Awareness Act, from

consumers, residents, and victims. The consumer hotline may be used for this purpose. Information obtained shall be directed to the appropriate enforcement entity, as determined by the department.

Section 5. Section 501.169, Florida Statutes, is created to read:

501.169 Civil penalties.--

(1) An on-line dating service provider that registers Florida members must comply with the provisions of ss. 501.165-501.171.

(2) Failure to comply with the disclosure requirements of ss. 501.165-501.171 shall constitute a deceptive and unfair trade practice under part II. Each failure to provide a required disclosure constitutes a separate violation.

(3) In addition to the remedy provided in subsection (2), the court may impose a civil penalty of up to $1,000 per violation, with an aggregate total not to exceed $25,000 for any 24-hour period, against any on-line dating service provider that violates any requirement of ss. 501.165-501.171. Suit may be brought by an enforcing authority, as defined in s. 501.203. Any penalties collected shall accrue to the enforcing authority or the department's Division of Consumer Services to further consumer enforcement efforts.

Section 6. Section 501.171, Florida Statutes, is created to read:

501.171 Exclusions.--

(1) An Internet access service or other Internet service provider does not violate ss. 501.165-501.171 solely as a result

of serving as an intermediary for the transmission of electronic messages between members of an on-line dating service provider.

(2) An Internet access service or other Internet service provider shall not be considered an on-line dating service provider within the meaning of ss. 501.165-501.171 as to any on-line dating service website provided by another person or entity.

Section 7. The Division of Statutory Revision is directed to include the provisions of sections 501.165-501.171, Florida Statutes, in part I of chapter 501, Florida Statutes.

Section 8. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 9. This act shall take effect July 1, 2006.

Workshop
Bill(s)

	HB 603 – Flores	HB 965 – Domino	Domestic Security PCB DS 06-02
• Motor fuel retail outlets constructed and/or substantially renovated after July 1, 2006.			X
• Applies to any self/full serve motor fuel retail outlet. • Doesn't apply to: »Automobile dealer »Person operating a fleet of motor vehicles, or »Person who sells motor fuel exclusively to a fleet of motor vehicles.			X
• Violation is misdemeanor of the second degree.	X	X	
• Effective date – July 1, 2006			X
• Motor fuel retail outlets constructed on/after June 1, 2006	X	X	
• All other motor fuel retail outlets must be in compliance by December 1, 2007.	X		
• Effective date – June 1, 2006	X	X	
• Motor fuel retail outlets with a minimum monthly average motor fuel sales volume of 125,000 gallons for any 6-month period during calendar year 2005 must be in compliance by December 1, 2007.		X	
• Provides tax credit against the motor fuel taxes collected.		X	X
• Preempts regulation of generators at petroleum facilities to the state.		X	X
• By December 31, 2006, motor fuel retail outlets located within one half mile proximate to an interstate or state/federally designated evacuation route meeting the following criteria: 1. Located in a county having a population of 300,000 or more having 16 or more fueling			X

positions. 2. Located in a county having a population of 100,000 or more but fewer than 300,000 having 12 or more fueling positions. 3. Located in a county having a population of fewer than 100,000 having eight or more fueling positions. must be pre-wired with an appropriate transfer switch and capable of operating all systems using an alternate generated power source.			
• Establishes the Florida Disaster Motor Fuel Supplier Program, which precertifies motor fuel retail outlets to participate in a network of emergency responders to provide fuel supplies and services, to government, medical, critical infrastructure, and other responders, as well as the general public.			X

A bill to be entitled

An act relating to gasoline stations; creating the "Consumer Emergency Gasoline Act"; requiring that retail gasoline stations be equipped with an alternative means of power generation so that the station's fuel pumps may be operated in the event of a power outage; providing a period for existing retail gasoline stations to comply with the act; providing a penalty; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Consumer Emergency Gasoline Act.--

(1) Any gasoline station that offers motor fuel for sale at retail to the public must be equipped with an alternative means of power generation on site so that the station's fuel pumps may be operated in the event of a power outage. The alternative means of power generation must be maintained and kept fully operational at all times and the gasoline station must be capable of pumping motor fuel immediately following a loss of power.

(2) Subsection (1) applies to any newly constructed gasoline station for which a certificate of occupancy is issued on or after June 1, 2006. A gasoline station that obtained a certificate of occupancy before June 1, 2006, has until December 1, 2007, to comply with the requirements of subsection (1).

(3) A violation of subsection (1) is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s.

775.083.

Section 2. This act shall take effect June 1, 2006.

A bill to be entitled

An act relating to the Consumer Emergency Gasoline Act; creating s. 206.627, F.S.; requiring the owners of certain retail gasoline stations to purchase and install equipment to provide an alternative means of generating electric power for purposes of operating the station's fuel pumps under certain circumstances; providing application; providing a schedule of compliance; providing a criminal penalty; providing for a credit against motor fuel tax collections to any retail gasoline station owner who purchases and installs such equipment; providing limitations; requiring the Department of Revenue to provide forms and procedures for the credit by rule; preempting to the state the regulation, siting requirements, and placement of electric power generators at petroleum retail and wholesale facilities; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 206.627, Florida Statutes, is created to read:

206.627 Consumer Emergency Gasoline Act.--

(1) The owner of any gasoline station that sells motor fuel at retail to the general public and that had a minimum monthly average motor fuel sales volume of 125,000 gallons for any 6-month period during calendar year 2005 shall purchase and install on the station property equipment that provides an

alternative means of generating electric power for purposes of operating the station's fuel pumps in the event of an electric power outage or interruption in electric service. Such equipment must be maintained and kept fully operational at all times, and the station must be capable of pumping motor fuel immediately upon the occurrence of an electric power outage or interruption in electric service.

(2) Notwithstanding the volume limitation in subsection (1), subsection (1) also applies to the owner of any newly constructed gasoline station for which a certificate of occupancy and operation is issued on or after June 1, 2006. Subject to the volume limitation in subsection (1), the owner of a gasoline station for which a certificate of occupancy and operation was issued before June 1, 2006, shall comply with the requirements of subsection (1) by December 1, 2007.

(3) The owner of a gasoline station who fails to comply with the requirements of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4)(a) The owner of any gasoline station who purchases and installs equipment described in subsection (1) is entitled to a credit against the motor fuel taxes collected at that station for purposes of defraying the costs of purchasing and installing that equipment. The amount of the credit shall not exceed the cost of purchasing and installing the equipment at that station. The maximum amount of the credit shall be based upon the amount of motor fuel taxes collected at that station during March 2006.

(b) The station owner must apply to the department for the

credit on forms developed by the department and pursuant to procedures adopted by the department.

(c) The department shall provide by rule forms and procedures for applying for and granting the credit authorized under this subsection.

Section 2. Regulation of generators at petroleum facilities preempted to state.--Notwithstanding any other law or local ordinance and to ensure the optimization of uniform electric power generation placement at petroleum facilities throughout the state, the regulation, requirements for siting, and placement of electric power generators at petroleum retail and wholesale facilities are preempted to the state.

Section 3. This act shall take effect June 1, 2006.